

Department of Defense, OPM

§ 9901.202

to the extent authorized by 5 U.S.C. 9902 to conform to the provisions of this part.

(2) This part must be interpreted in a way that recognizes the critical national security mission of the Department, and each provision of this part must be construed to promote the swift, flexible, effective day-to-day accomplishment of this mission, as defined by the Secretary.

(b)(1) For the purpose of applying other provisions of law or Governmentwide regulations that reference provisions under chapters 43, 51, 53, and 55 (subchapter V only), of title 5, U.S. Code, the referenced provisions are not waived but are modified consistent with the corresponding regulations in this part, except as otherwise provided in this part (including paragraph (c) of this section) or in implementing issuances.

(2) If another provision of law or Governmentwide regulations require coverage under one of the chapters modified or waived under this part (*i.e.*, chapters 43, 51, 53, and 55 (subchapter V only) of title 5, U.S. Code), DoD employees are deemed to be covered by the applicable chapter notwithstanding coverage under a system established under this part. Selected examples of provisions that continue to apply to any DoD employees (notwithstanding coverage under subparts B through D of this part) include, but are not limited to, the following:

(i) Foreign language awards for law enforcement officers under 5 U.S.C. 4521 through 4523;

(ii) Pay for firefighters under 5 U.S.C. 5545b; and

(iii) Recruitment, relocation, and retention payments under 5 U.S.C. 5753 through 5754.

(c)(1) Law enforcement officer special base rates under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101-509) do not apply to employees who are covered by an NSPS classification and pay system established under subparts B and C of this part.

(2) Physicians' comparability allowances under 5 U.S.C. 5948 do not apply to employees covered by an NSPS classification and pay system established under subparts B and C of this part.

(d) Nothing in this part waives, modifies or otherwise affects the employment discrimination laws that the Equal Employment Opportunity Commission (EEOC) enforces under 42 U.S.C. 2000e *et seq.*, 29 U.S.C. 621 *et seq.*, 29 U.S.C. 791 *et seq.*, and 29 U.S.C. 206(d).

§ 9901.107 Program evaluation.

The Secretary will evaluate the regulations in this part and their implementation.

Subpart B—Classification

GENERAL

§ 9901.201 Purpose.

(a) This subpart establishes a classification structure and rules for covered DoD employees and positions to replace the classification structure and rules in 5 U.S.C. chapter 51, in accordance with the merit system principle that equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and with appropriate incentives and recognition provided for excellence in performance.

(b) The basis for determining the appropriate classification under NSPS is the primary duties and responsibilities of the position, level of difficulty, occupational qualifications, competency requirements, mission of the organization, and relationship of the position to other positions or organizational levels.

(c) Any classification system prescribed under this subpart will be established in conjunction with the pay system described in subpart C of this part.

§ 9901.202 Coverage.

(a) This subpart applies to eligible DoD employees and positions listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b) or (f).

(b) The following employees of, or positions in, DoD organizational and functional units are eligible for coverage under this subpart:

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(1) Employees and positions that would otherwise be covered by the General Schedule classification system established under 5 U.S.C. chapter 51;

(2) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376;

(3) Members of the Senior Executive Service (SES) who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to § 9901.102(d); and

(4) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

§ 9901.203 Waivers.

(a) When a specified category of employees is covered by a classification system established under this subpart, the provisions of 5 U.S.C. chapter 51 are waived with respect to that category of employees, except as provided in paragraph (b) of this section, §§ 9901.106, and 9901.222(d) (with respect to OPM's authority to act on requests for classification decisions under 5 U.S.C. 5112(b) and review of pay plans under 5 U.S.C. 5103).

(b) Section 5108 of title 5, U.S. Code, dealing with the classification of positions above GS-15, is not waived for the purpose of defining and allocating Senior Executive Service (SES) positions under 5 U.S.C. 3132 and 3133 or applying provisions of law outside the waivable and modifiable chapters of title 5, U.S. Code—e.g., 5 U.S.C. 4507 and 4507a (regarding Presidential rank awards), 5 U.S.C. 6303(f) (regarding annual leave accrual for members of the SES and employees in SL/ST positions), and 5 U.S.C. 6304(f) (regarding annual leave ceilings for members of the SES and employees in SL/ST positions).

§ 9901.204 Definitions.

In this subpart:

Band has the meaning given that term in § 9901.103.

Basic pay has the meaning given that term in § 9901.103.

Career group has the meaning given that term in § 9901.103.

Classification, also referred to as job evaluation, means the process of analyzing and assigning a job or position to an occupational series, official title,

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career group, pay schedule, and pay band for pay and other related purposes.

Competencies has the meaning given that term in § 9901.103.

Occupational series has the meaning given that term in § 9901.103.

Official title means the position title prescribed in an NSPS classification standard or by supplemental Component guidance.

Pay band or *band* has the meaning given that term in § 9901.103.

Pay schedule has the meaning given that term in § 9901.103.

Position or *job* means the duties, responsibilities, and related competency requirements that are assigned to an employee.

CLASSIFICATION STRUCTURE

§ 9901.211 Career groups.

For the purpose of classifying positions, the Secretary may establish career groups based on factors such as mission or function; nature of work; qualifications or competencies; career or pay progression patterns; relevant labor-market features; and other characteristics of those occupations or positions. The Secretary will document in implementing issuances the criteria and rationale for grouping occupations or positions into career groups.

§ 9901.212 Pay schedules and pay bands.

(a) For purposes of identifying relative levels of work and corresponding pay ranges, the Secretary may establish one or more pay schedules within each career group.

(b) Each pay schedule may include one or more pay bands.

(c) The Secretary will document in implementing issuances the definitions for each pay band which specify the type and range of difficulty and responsibility, qualifications or competencies, or other characteristics of the work encompassed by the pay band.

(d) The Secretary will—

(1) Use qualification standards established or approved by OPM, or establish qualification standards for positions covered by NSPS, subject to § 9901.105(b)(2); and